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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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WAYNE P. SAYA, SR.

v.

JAMES W. DONCHESS, ET AL

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21-cv-1069-PB  
February 23, 2022  
10:04 a.m.

TRANSCRIPT OF CASE MANAGEMENT CONFERENCE  
BEFORE THE HONORABLE PAUL J. BARBADORO

APPEARANCES:

For the Plaintiff:

Wayne P. Saya, Sr., Pro Se

For the Defendants:

Steven A. Bolton, Esq.  
City of Nashua Corporation Counsel

Seth Michael Zoracki, Esq.  
New Hampshire Banking Department

Court Reporter:

Susan M. Bateman, RPR, CRR  
Official Court Reporter  
United States District Court  
55 Pleasant Street  
Concord, NH 03301  
(603) 225-1453

1 P R O C E E D I N G S

2 THE CLERK: This Court is in session and has for  
3 consideration a case management conference in 21-cv-1069-PB,  
4 Wayne Saya versus Mayor, City of Nashua, et al.

5 THE COURT: All right. So the purpose for this  
6 conference is to try to set a schedule for the resolution of  
7 all the pending matters, any discovery that's going to be  
8 required, any motion practice that the parties want to engage  
9 in.

10 Before I do, though, let me just briefly touch base  
11 with the parties to understand their current positions.

12 Mr. Saya, I have read your complaint. It's a  
13 complex complaint. You make a lot of assertions in it.

14 And at the risk of oversimplifying, it seems to me  
15 that your primary concerns are you are alleging that the City  
16 of Nashua has an ordinance regarding masking that violates  
17 your constitutional rights and that the state of New Hampshire  
18 has accepted a federal COVID-19 grant and that their act of  
19 acceptance violates your constitutional rights.

20 Are those your principal claims, understanding that  
21 you've filed probably a 200-paragraph complaint, but is that a  
22 fair but simplified summary of what your principal concerns  
23 are?

24 MR. SAYA: Well, yes, but it extended more than  
25 that. I tried to explain it more in detail within my

1 objection to the state defendant's motion that I submitted  
2 yesterday, and that goes into detail on how the board of  
3 aldermen depends on the Department of Public Health. The  
4 Department of Public Health depends upon the Department of  
5 Health and Human Services. The Department of Health and Human  
6 Services depends upon their requirement with regard to the  
7 contractual obligations by the state.

8 Because the only -- the only way -- the only thing  
9 that they have mentioned with regard to why they're doing this  
10 is the CDC, and I explained that in my motion of yesterday  
11 because -- I probably didn't explain it as much yesterday. I  
12 wrote it more as an engineering paper, which I'm used to  
13 doing, than a legal paper. So I'm a bit out of my league  
14 there.

15 THE COURT: It's complicated stuff.

16 I understand from my reading of the complaint --  
17 and I haven't studied your objection to the motion to dismiss  
18 yet because there's a reply deadline and I'm going to wait  
19 until everything is together on that, so I haven't studied  
20 that yet, but I understand you're making these claims about  
21 interrelationships, that sort of bad things started happening  
22 with the CDC and there's interconnections with what the CDC  
23 does and what the state does, and then interconnections with  
24 what the state does and the City of Nashua does, and that they  
25 all are somehow connected in ways that support your claims. I

1 understand that general proposition.

2 But your core argument is that they're restricting  
3 your constitutional rights at the local level by this  
4 ordinance and that they're violating your I think you  
5 primarily are saying dormant commerce clause rights by the way  
6 this grant is being taken by the state. Is that --

7 MR. SAYA: Yes. If there's a procedural due  
8 process in place in the City of Nashua, yes, the state's case  
9 goes away.

10 THE COURT: Yeah. Okay.

11 MR. SAYA: I mean, that's from my position.

12 THE COURT: All right. Okay. So you're also  
13 concerned about the process by which the ordinance was  
14 adopted. Okay. I get it.

15 I'm looking at it in terms of trying to manage the  
16 case, not the micro details of your arguments. I'm just  
17 trying to figure out what is this case about, what do we have  
18 to do to resolve it, and one of the things that's very clear  
19 that it's about is an ordinance that the City of Nashua has  
20 enacted.

21 So let me start there and ask Nashua's attorney to  
22 tell me what is the ordinance, what is the current status of  
23 the ordinance. I have not looked at the underlying ordinance  
24 yet. So you educate me about that. What does your ordinance  
25 say and do? Is it still in effect? What is the status of

1     that ordinance?

2                 MR. BOLTON: Thank you, your Honor.

3                 Steve Bolton for the City of Nashua.

4                 The ordinance required people entering a public  
5 place to be wearing a face covering covering the nose and  
6 mouth. That ordinance was repealed last evening. The Mayor  
7 will sign it today and it will be no longer in effect.

8                 THE COURT: Does that from your perspective do  
9 anything about the viability of the claims that the plaintiff  
10 has against you for declaratory and injunctive relief?

11                MR. BOLTON: I think it moots the basic premise of  
12 the case.

13                Now, Mr. Saya contends -- let me step back a  
14 minute. There was a mask requirement originally back in 2020.  
15 It was then repealed. When the COVID situation again got  
16 worse, there was another ordinance passed reinstating a mask  
17 requirement. Not identical, but in substance very similar.  
18 That has now been repealed in response to declining rates in  
19 Nashua of infections and hospitalizations.

20                So I think that part of the case is mooted. He is  
21 no longer required to wear a mask to do his shopping or  
22 business in the community.

23                He contends that some of the procedures used  
24 violated certain state statutes, notably RSA 31:5.

25                I have pointed out in my answer and in conversation

1 with Mr. Saya that 31:5 relates to towns with a town meeting  
2 form of government and it does not relate to the City of  
3 Nashua which has a board of aldermen form of government.

4 I guess he still thinks that has some viability in  
5 his claim.

6 THE COURT: Let me stop and focus in on -- I  
7 construe his complaint as seeking injunctive and declaratory  
8 relief. To the extent he is seeking relief with respect to an  
9 ordinance that no longer is in place, your contention is that  
10 that claim is moot. He would argue that it is not moot.

11 It would seem that the ordinary way that one would  
12 present that issue for resolution to the Court would be in a  
13 motion to dismiss for mootness, and you would simply identify  
14 the ordinance that was enacted, produce evidence that it has  
15 been repealed, make your argument about mootness and a motion  
16 to dismiss, Mr. Saya would make his counterarguments in an  
17 objection, and I could rule on that motion.

18 If you are right, the core components of his claim  
19 against you disappear. If you are wrong, we then have to turn  
20 to any discovery that Mr. Saya might want to conduct and  
21 schedule a hearing on the petition for injunctive relief  
22 unless you have some summary judgment argument.

23 So it would seem to me given what you've just said  
24 to me that you would want some time to prepare and file a  
25 motion to dismiss based on mootness. Is that right?

1 MR. BOLTON: That is accurate, your Honor.

2 I can say that the repeal happened last evening at  
3 about 10:00 p.m. It is coincidental in the timing. This case  
4 had nothing to do with the timing.

5 THE COURT: Okay. All right. Whatever it is, it  
6 happened, and you might need a little time to prepare. That's  
7 one thing we'll put on the agenda to discuss in a minute.

8 Let me turn to the state. You've already filed a  
9 motion to dismiss. You claim, among other things, that the  
10 plaintiff lacks standing and that his claims against you -- to  
11 the extent he is challenging your receipt of the grant, he  
12 clearly lacks standing. And I think you're saying to the  
13 extent he's saying anything else we don't really understand  
14 him and we want him to file an amended complaint that's clear  
15 enough for us to be able to respond to, and we don't think we  
16 have it yet.

17 Is that your position?

18 MR. ZORACKI: That's correct, your Honor.

19 THE COURT: Okay.

20 So, Mr. Saya, you filed an objection to their  
21 motion to dismiss where you've apparently tried to more  
22 specifically explain your theories about why their motions  
23 should be denied. They have an opportunity to file a reply to  
24 that. Once it's done, I'll just read -- what I'm proposing to  
25 do is just read those and do my legal research, and then I'll

1 issue an order either granting or denying the motion.

2 If the motion is granted in its entirety, your  
3 claims against the state defendants would be dismissed. You  
4 would have a right to appeal.

5 If I were to deny the motion, we would then follow  
6 the same practice, what discovery do we need to conduct, what  
7 motion practice do we need to have.

8 If the case survives that initial motion practice,  
9 you have a request for preliminary and permanent injunction.  
10 I would propose to put that on an accelerated track, do any  
11 accelerated discovery that needs to be done, and have a  
12 hearing on it and try to rule on it within a matter of a few  
13 months.

14 But the first step should be each of the defendants  
15 should have an opportunity to get a ruling from me on their  
16 motions to dismiss. So that's what I would propose we do  
17 first. Set a schedule for Mr. Bolton to file a motion to  
18 dismiss on behalf of the Nashua defendants, let the state file  
19 its reply to your objection to its motions to dismiss, let you  
20 fully respond to Mr. Bolton's motion to dismiss. I'll then  
21 take the matter under advisement and issue written decisions  
22 on those two motions.

23 If the case goes out on the motions to dismiss, you  
24 can file a notice of appeal. If it does not go out on a  
25 motion to dismiss, I would propose we have another status



1 conference and set a schedule for any discovery and any  
2 further motion practice and to set an expedited hearing date  
3 on the motion for injunctive relief.

4 Is that an acceptable proposal to you, Mr. Saya?

5 MR. SAYA: Yes. One thing I would like to mention  
6 is the fact that harm had already been established prior to  
7 the dismissal -- prior to any motion coming up that Mr. Bolton  
8 may be filing so -- and there are a lot of jury questions  
9 included in that.

10 So I know that because of the harm I've already  
11 suffered during the time when I was having my cardiac issues  
12 at the time the mask mandate was initially put into effect,  
13 which is in my complaint, that would be one of my objections  
14 to his motion.

15 THE COURT: I understand. You'll do your research.  
16 I mean these -- the kind of arguments that you're pressing,  
17 Mr. Saya, are legally quite complex and frankly more complex  
18 than most lawyers are able to handle. Certainly they're  
19 challenging for a pro se litigant. But I'm going to need you  
20 to give me your best legal analysis on it when the time comes  
21 in, and you'll just have to go to the library and try to do  
22 research on mootness and explain your theories.

23 I understand your point. You have an argument that  
24 you want to press that the case should not be deemed moot  
25 because you've already suffered an injury. There will be a

1 response to that argument under the law. I'm not going to  
2 serve as anyone's lawyer here or advise people as to how to  
3 proceed. I'll just take your brief when you file it and rule  
4 on the merits.

5 Mr. Bolton, we would ordinarily use a 14-day  
6 timeframe here. Perhaps given the complexity of the motion  
7 for both sides it would make sense for me to give you 30 days,  
8 give Mr. Saya 30 days, give you 14 days to reply, so that you  
9 can all get enough time to do good quality work which I'm  
10 going to expect from all of you. Especially the lawyers.

11 If I gave you 30 days to file your motion, would  
12 that give you sufficient time to do a good quality memorandum?

13 MR. BOLTON: Yes, your Honor.

14 THE COURT: And for you, Mr. Saya, is 30 days okay?

15 MR. SAYA: Yes, sir.

16 THE COURT: Okay. So let's set a schedule.

17 Defendant to file a motion to dismiss based on mootness within  
18 30 days. Mr. Saya to respond within 30 days. A reply to be  
19 filed within 14 days thereafter.

20 I'll take the matter under advisement when it's  
21 ripe and decide it on the pleadings without a hearing.

22 The state has a time set under our rule for a  
23 reply. You'll file your reply in the ordinary course.

24 I'll take that matter under advisement, decide it  
25 without a hearing, and if there's anything left of the case

1 after those rulings, I'll ask the clerk to set another status  
2 conference to allow for potential discovery, further motion  
3 practice, and to set a date for a hearing on the merits.

4           Until then, I don't see any purpose to be served in  
5 engaging in other motion practice or discovery. We've got to  
6 focus on these issues. Let's just get these done, let's see  
7 what remains, and then I'll meet with you again and we'll talk  
8 about what else needs to be done to get the case resolved.

9           Acceptable to you, Mr. Saya?

10          MR. SAYA: Yes, your Honor.

11          THE COURT: Okay. Acceptable to you, Mr. Bolton?

12          MR. BOLTON: Yes, your Honor. Thank you.

13          THE COURT: Acceptable to the state?

14          MR. ZORACKI: Yes, your Honor.

15          THE COURT: Okay. Anything else anyone wants to  
16 take up with me? No? Okay. Great. Thanks.

17               So I would just ask my case manager to note that  
18 schedule down. I don't think I need to issue a separate  
19 order. You can just enter something on the docket making  
20 clear what the deadlines are.

21          THE CLERK: Yes.

22               No further sur-replies after replies?

23          THE COURT: No sur-replies. We'll get it done just  
24 after the replies and we'll be good to go. I'm giving them  
25 plenty of time to make sure we get things right.

1           Okay. Thank you. I'll look for your pleadings and  
2 try to get them done as quickly as I can given the other  
3 pressing business that I'm working on, okay?

4           All right. Thank you everyone. That concludes the  
5 hearing.

6           MR. BOLTON: Thank you, your Honor.

7           (Conclusion of hearing at 11:22 a.m.)  
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## C E R T I F I C A T E

I, Susan M. Bateman, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 8-15-22      /s/ Susan M. Bateman  
SUSAN M. BATEMAN, RPR, CRR